



# California Fair Political Practices Commission

January 22, 1988

Robert E. Herkert  
P.O. Box 1077  
Williams, CA 95987

Re: Your Request for Advice  
Our File No. I-87-319

Dear Mr. Herkert:

You have requested advice about how the Political Reform Act (the "Act") would apply to you should you become a Colusa County supervisor.<sup>1/</sup> However, you have asked for advice about a hypothetical situation. Consequently, we consider your request one for informal assistance.<sup>2/</sup>

## QUESTION

If you are elected to the Board of Supervisors of Colusa County, will you be disqualified from participating in decisions concerning your employer the Colusa County Farm Bureau or its members or directors?

## CONCLUSION

The Colusa County Farm Bureau is a source of income to you. Therefore, you would be disqualified from participating in decisions concerning the bureau.

Nevertheless, members and directors of the Colusa County Farm Bureau would not be sources of income to you, unless a member or director personally gave you income or gifts worth at least \$250. Consequently, you would not be disqualified from participating in decisions concerning members or directors of the farm bureau.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

### FACTS

You are the Manager of the Colusa County Farm Bureau, which is a nonprofit corporation. Your duties include paying the bureau's bills and keeping track of the bureau's finances. You also maintain agendas and take minutes of meetings, prepare correspondence and position statements for publication, and manage the farm bureau's property.

The board of directors has designated you a corporate officer, and you control the corporate seal. But the board of directors also oversees all your work, decides policy issues and allocates bureau expenditures.

The farm bureau has about 1,000 local members. Non-farmers pay annual dues of \$45 and farmers pay \$55. Many members have joined the farm bureau because of the group insurance benefits, such as for workers' compensation and health insurance.

You are considering running for election to the Colusa County Board of Supervisors. In the past the farm bureau has appeared before the board of supervisors on local issues, such as the disposal of asbestos waste in the county. The farm bureau also publishes a newsletter in which the farm bureau comments on local political affairs.

### ANALYSIS

Section 87100 forbids a public official from making, participating in making or attempting to use his official position to influence a governmental decision in which he has a financial interest. An official is disqualified from participating in a decision that will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on any person that has promised or paid \$250 or more to the official within 12 months of the decision. (Section 87103.)

#### Employer As a Source of Income

The Colusa County Farm Bureau is a source of income to you if your salary is at least \$250 a year. You would be disqualified from participating in a governmental decision in which the farm bureau appeared before the board of supervisors. (Regulation 18702.1, copy enclosed.)

As a supervisor, you may also face decisions which would materially affect the farm bureau even though the farm bureau was not appearing before you. You are disqualified from making

or participating in a decision that would have a reasonably foreseeable material financial effect on the farm bureau that would be distinguishable from the effect on the public generally. (Section 87103(c); Regulation 18700, copy enclosed.)

The effect of a decision is foreseeable if there is a substantial likelihood the effect will occur. An effect does not have to be certain to be foreseeable. If an effect were a mere possibility, however, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed; see also Witt v. Morrow (1977) 70 Cal. App.3d 817 and Downey Cares v. Downey Community Development Company (1987) 196 Cal. App.3d 983, 991.)

The farm bureau is a nonprofit corporation and not a business entity for purposes of the Act. (Section 82005.) The factors listed in Regulation 18702.2 (copy enclosed) are used to evaluate the materiality of an effect on a business entity. Since the farm bureau is not a business entity, that regulation is not directly applicable. Instead you would determine whether the foreseeable effect on the farm bureau would be "significant." A significant effect would include an increase in the fair market value of the farm bureau's real property or an effect that results in a loss or increase in membership. (Regulation 18702(b)(3)(D), copy enclosed; see O'Donnell Advice Letter, No. A-86-207; Pitts Advice Letter, No. A-85-028, copies enclosed.)

An effect also would be material if a nexus existed between the governmental decision and the purpose for which you received income. (Regulation 18702(b)(3)(B); see Best Advice Letter, No. A-81-032, copy enclosed.) For example, if a decision concerns an issue on which the farm bureau has taken a position, a nexus exists between your receipt of income and the decision. (See Freers Advice Letter, No. A-86-281, copy enclosed.)

You also may not attempt to influence a decision in which the farm bureau appears before the board of supervisors or an agency under the board's budgetary control. (Regulation 18700.1, copy enclosed.) You also may not attempt to influence board members or other city officials about a decision that would have a significant effect on the farm bureau. Attempting to influence includes contacting, appearing before, or otherwise attempting to influence board members or city officials, employees, or consultants. (Regulation 18700.1.)

#### Members and Directors

On the other hand, members and directors of the Colusa County Farm Bureau are not ordinarily sources of income to

Robert E. Herkert  
January 22, 1988  
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you. In the past, the Commission has not considered a corporation's members or directors to be sources of income to the public official unless a member or director actually provided income to the official. (See Best Advice Letter, No. A-81-032.)

Therefore, the farm bureau's members and directors would not ordinarily be sources of income to you because of your status as a farm bureau employee. Consequently, if you were a county supervisor, you would not be disqualified from making a decision that would affect an individual member or director of the farm bureau.

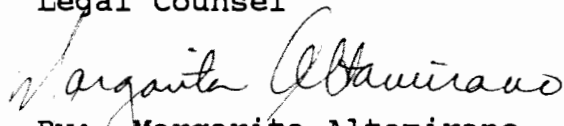
Of course, if a farm bureau member or director personally gave you income or gifts worth at least \$250, that member or director would be a source of income to you. Income includes a gift given to a member of your immediate family if you use, dispose of, exercise control over use of, or enjoy direct benefit from the gift. (Section 82030(a); Regulation 18726.2, copy enclosed.) You would be disqualified if the source of income appeared before the board of supervisors or would be materially affected by a board decision, within 12 months of promising or giving you at least \$250 in income. (Regulation 18702.1.)

You also would have a disqualifying financial interest in any decision that would have a reasonably foreseeable material financial effect on that farm bureau member or director, which effect would be distinguishable from the effect on the public generally. (Section 87103 and Regulations 18700, 18700.1, 18702, and 18702.2.) As noted above, an effect is also material if a nexus exists between the governmental decision and the purpose for which you received the income. (Regulation 18702(3)(B).) If the source of income were a business entity, you would use the factors listed in Regulation 18702.2 to determine whether the decision significantly affected the business entity's gross revenues, expenses, assets or liabilities.

I hope we have answered your advice request. Please call me at (916) 322-5901 if you have questions about this letter.

Sincerely,

Diane Griffiths  
Legal Counsel

  
By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:jaj  
Enclosures

DEC 21 1987

Robert E. Herkert  
Post Office Box 1077  
Williams, CA 95987

December 17, 1987

Fair Political Practices Commission  
General Council Diane Griffiths  
Post Office Box 807  
428 "J" Streets  
Sacramento, CA 95804

Dear Ms. Griffiths:

For several months I have contemplated running for a spot on the Colusa County Board of Supervisors. However, I'm concerned my position with Colusa County Farm Bureau may pose some conflicts of interest. I hope you'll take a few moments to review my concerns and inform me about possible conflicts I could be facing. Also, are there things I could do, short of resigning my position, to resolve any of the problems you envision?

As a salaried manager, I'm responsible for all fiscal affairs, property management, keeping of the minutes and preparation of correspondence and position statements for publication as overseen by an elected board of directors. I have been designated as a corporate officer.

CCFB currently has approximately 1000 local members, many of whom may or may not profit from decisions I participate in should I be elected. For instance, I am most concerned about property disputes, requests for easements and planning issues.

Sincerely

*Bob H.*

Robert E. Herkert

*P.S. May X-MAS*  
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*Bob H.*

Robert E. Herkert

*P.S. May X-MAS*  
*h*



# California Fair Political Practices Commission

December 21, 1987

Robert E. Herkert  
P.O. Box 1077  
Williams, CA 95987

Re: 87-319

Dear Mr. Herkert:

Your letter requesting advice under the Political Reform Act was received on December 21, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Diane M. Griffiths*  
Diane M. Griffiths  
General Counsel

DMG:plh